

REFERENCE

PREFACE.

WITH a view to enable Accountants, Secretaries, Managers and Auditors or other officers of a company to understand and prepare a Balance Sheet in accordance with the requirements and provisions of the Indian Companies Act VII of 1913, these notes are collected as some guide to the comprehension of what may be regarded as purely technical matters. I have attempted as far as practicable to discuss the object of each head and sub-head in the *pro forma* Balance Sheet, and in arriving at certain conclusions or offering suggestions I have not only availed myself of my experience but have consulted authoritative works on Accountancy that are considered Standard Works of Reference. Particularly in dealing with the question of the Responsibility of Auditors I have collected the materials available from various Standard Works on Accountancy and Auditing with a view to invite on salient points the attention of those who are interested in the subject and who do not make a special study of the technical treatises.

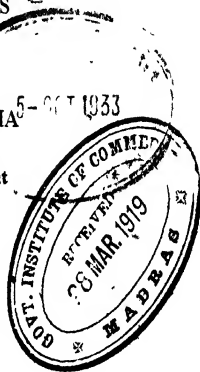
The Statutory Requirements of Limited Companies and the Fines and Penalties imposed for non-compliance with certain provisions of the Act are collected in the Form of a Summary that may

BALANCE SHEET
AND
STATUTORY REQUIREMENTS
UNDER
THE INDIAN COMPANIES ACT VII OF 1913
AND
THE DUTIES AND RESPONSIBILITIES
OF AUDITORS

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prove an useful index for purposes of reference. This summary I have attempted to prepare carefully from the provisions of the Act, but I have refrained from discussing the legal technicalities which are beyond the province of this work that is intended only as handy guide for ready reference.

I lay no claim to completeness in this handy guide and accordingly I crave indulgence of my readers for any shortcomings that may be found in these pages. I need hardly add that I should be greatly obliged to those of my readers who would favour me with their suggestions and opinions which shall receive my earnest attention.

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CHAPTER

BALANCE SHEET

The Balance Sheet is the most important statement of accounts which has to be laid before the shareholders of a company as it shows the financial position of a company according to the books of accounts at a particular moment of time. It is necessary therefore that it should be so clearly prepared that every shareholder of ordinary intelligence can understand and grasp its proper significance. A knowledge of book-keeping is not necessarily essential to the comprehension of a Balance Sheet properly drawn, though it seems to be a prevailing idea with the general public that accounts are more or less a technical matter. While it is admitted that the keeping of proper books of account and the preparation of various financial statements are matters of expert knowledge, there is no reason why a properly prepared statement could not readily and easily be understood by any individual.

A legal definition of a full and fair Balance Sheet is found in the Judgment of the Court of Appeal *in re* London and General Bank (No. 2). (1895, 2 Ch., '692). The Court held that "A full and fair Balance Sheet must be such a Balance Sheet as to convey a truthful statement as to the

Company's position. It must not conceal any known cause of weakness in the financial position, or suggest anything which cannot be supported as fairly correct in a business point of view."

Under the Indian Companies Act VII of 1913, a Balance Sheet is required to be prepared in a particular form, being Form F in the Third Schedule of the Act. Sections 130, 131, 132, 133, 134 and 135 of the Act relate to Statements, Books and Accounts of a Limited Company.

Section 130 provides that "Every company shall keep proper books of account in which shall be entered full, true and complete accounts of the affairs and transactions of the company."

Section 131 provides that—

"(1) Every company shall, once at least in every year and at intervals not more than fifteen months, cause the accounts of the company to be balanced and the Balance Sheet to be prepared.

(2) The Balance Sheet shall be audited by an auditor or auditors of the company as hereinafter provided, and the auditors' report shall be attached thereto, or there shall be inserted at the foot thereof a reference to such report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other than a private company shall send a copy of such Balance Sheet so

audited to every member of the company at his registered address at least seven days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of members of the company during a period of at least seven days before that meeting.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty."

This section should be read with Section 145. The latter section prescribes the powers and duties of Auditors. When the Auditors have reported on the Balance Sheet as required by Section 145, this section provides that :—

(1) The Report is to be read before the company in General Meeting.

(2) The Report shall be open to inspection by any member of the company.

(3) The Report shall be attached to the Balance Sheet or a reference to such report shall be made at the foot thereof.

At least seven days before the meeting, a copy of the audited Balance Sheet shall be sent to the registered address of every member of the company, and a copy deposited for inspection by the members at the Registered Office of the company.

The Balance Sheet would ordinarily be laid before the company at the Annual General Meeting held under Section 76, but this is a matter that would be governed by the Articles of Association of each company.

Section 132 provides that :—

“(1) The Balance Sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of these liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The Balance Sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.”

Section 133 provides that :—

“(1) Save as provided by sub-section (2) the Balance Sheet shall—

(i) in the case of the banking company, be signed by the manager (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors ;

(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole

director and by the manager (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less than the number of directors whose signatures are required by the sub-section (1), then the Balance Sheet shall be signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the Balance Sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

(3) If any copy of the Balance Sheet which has not been signed as required by this section is issued, circulated, or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with a fine which may extend to five hundred rupees."

Section 134 provides that :—

"(1) After the Balance Sheet has been laid before the company at the General Meeting, a copy thereof signed by the Manager or Secretary of the Company, shall be filed with the Registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of Section 32.

(2) If the General Meeting before which a Balance Sheet is laid does not adopt the Balance

Sheet, a statement of that fact and of the reasons therefor shall be annexed to the Balance Sheet and to the copy thereof required to be filed with the Registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by Section 32 for a default in complying with the provisions of that section."

Section 135 provides that "Save as otherwise provided in this Act any member of a company shall be entitled to be furnished with copies of the Balance Sheet and the Auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof."

The form referred to in Section 132, being Form F in the Third Schedule of the Act, is as follows :—

Balance Sheet as at

CAPITAL AND LIABILITIES.						Rs a. p.
<i>Capital—</i>						
Authorised Capital	shares of Rs.	each	...	..	.	.
Issued Capital	shares of Rs.	each	...	.	...
Subscribed Capitals	shares of Rs.	each	..	..	.	.
Amount called up at Rs.	per share	...		...
Less—Calls unpaid	...	...	...	...	..	.....
					
Add—Forfeited shares (amount paid up)	.	...		.....
Reserve Fund or Development Fund	...					
Any Sinking Fund	...	...	...	...	..
Any other Fund created out of net profits	...		...
Any Pension or Insurance Fund	...	..	..			.
Provision for Bad and Doubtful Debts	.	...		
Loan on Mortgage or Mortgage Debenture Bonds.						
Loans otherwise secured (Stating the nature of security)...	...	...	...	...	...	...
Loans unsecured	...	...	...	...	.
Interest	...	...	...	...	...	...

Taking the various headings in the prescribed form of the Balance Sheet and dealing first with the Capital and Liabilities side of the Balance Sheet, the first heading "Capital" provides for a very clear statement of company's Share Capital. The details required under this head are as under :—

"CAPITAL."

Authorised Capital	Shares of Rs.	... each.
Issued Capital	Shares of Rs.	... each.
Subscribed Capital	Shares of Rs	... each.
Amount called up at Rs.	per Share	
Less Calls unpaid		
Add Forfeited Shares (amount paid up)		

The various terms "Authorised," "Issued," "Subscribed," and "Called up" Capital require some consideration.

"Authorised Capital," otherwise called "Nominal Capital," represents the total amount of the Capital which is mentioned in the Memorandum of Association and up to which limit the company is authorised to raise the Share Capital whether issued by the company and subscribed for or not.

"Issued Capital" and "Subscribed Capital" have been regarded as synonymous terms. Some contend that Shares, issued for consideration other than Cash to promoters and others, ought to be shown separately from Shares for which the company actually received cash and that part of the Capital would be treated as "Issued Capital." There is however nothing to indicate this in actual

practice and the difference attempted to be shown between Issued and Subscribed Capital requires an expert legal interpretation. The more likely view however to be taken of "Issued Capital" is that it represents that part of the "Authorised or Nominal Capital" which is offered for subscription. As for example, say, a company is formed with a capital of Rupees Fifty Lacs (Rs. 50,00,000) divided into 5,000 shares of Rs. 1,000 each, of which it is intended to issue, say 3,000 shares. Rupees Fifty Lacs would represent the "Authorised," "Registered" or "Nominal" Capital, whereas Rs. 30,00,000 (Rupees Thirty Lacs) would represent the "Issued" Capital, and if out of this 3,000 shares proposed to be issued only 2,000 shares are taken up or subscribed for, Rs. 20,00,000 (Rupees Twenty Lacs) would represent the "Subscribed" Capital.

Now out of this 2,000 shares of Rs. 1,000 each subscribed for, if the company calls up only Rs. 500 per share, Rs. 10,00,000 (Rupees Ten Lacs) would represent the "Called up" Capital (4th sub-head of Capital).

If a part of this "Called up" amount, *i.e.*, amount for which notices of Calls have been sent out to Shareholders remains unpaid, that amount has to be deducted from the amount shown as "Called up" Capital in the Balance Sheet. Say, for instance, out of the above 2,000 shares on which Calls of Rs. 500 are made, and some Shareholders have paid amounts less than Rs. 500 per

share, such amount has to be deducted from the amount of "Called up" Capital. If on the other hand there have been Shareholders who have paid in full the face value of the shares held by them or paid amounts in excess of Rs. 500 per share Called up, such amounts would represent "Calls paid in advance" and be added to the Capital account. Strange as it is, in the *pro forma* Balance Sheet, no consideration seems to have been given to this last item, though this is an item that would be found in a large number of Balance Sheets, particularly in cases where companies have not Called in the full amount of the face or par value of its shares issued and subscribed for.

It may be pointed out that Accountants hold a different view and are not agreed between themselves as to the proper head under which such item "Calls received in advance" in the Balance Sheet should be placed. Some contend that such amount received in advance being part of the Capital monies "Calls in advance" should properly find place under the head of Capital while others hold that as long as the Capital is not Called up, it forms a debt and ought to appear under the heading of Liabilities of the company. It is however preferable to include "Calls in advance" just like "Calls in arrears" or "Calls unpaid" as an item forming part of the Capital rather than include it among items of Debts and Obligations of the company.

The following will illustrate how the Share Capital should be stated in a Balance Sheet :—

	Rs.	a.	p.
Nominal, Registered, or Authorised Capital.—			
5,000 Shares of Rs. 1,000 each ...	50,00,000	0	0
Issued Capital—			
3,000 Shares of Rs. 1,000 each ..	30,00,000	0	0
Subscribed Capital—			
2,000 Shares of Rs. 1,000 each ...	20,00,000	0	0
Amount Called up at Rs. 500 per Share ...	10,00,000	0	0
Less—Calls unpaid ...	1,00,000	0	0
	9,00,000	0	0
Add—Calls received in advance ...	50,000	0	0
	9,50,000	0	0
Add—Forfeited Shares—			
Amount paid up on 20 Shares now forfeited	2,000	0	0
	9,52,000	0	0

If on some of the shares, part of the amount is Called up say, Rs. 500 per share, and others are issued as fully paid-up to promoters or others, it is better to classify the item and show the fully paid-up shares separately, for instance, 500 fully paid-up shares at Rs. 1,000 each, Rs. 5,00,000 and then 2,000 shares on which Rs. 500 per share are Called up, Rs. 10,00,000.

Forfeited Shares—Rs. 2,000 as shown in the above illustration represents the amount received on 20 shares which have been forfeited. It has to be remembered that in such a case these 20 shares

have been omitted from the Subscribed Capital. It is always desirable not to include the amount of forfeited shares in the Capital account and the practice hitherto followed, approved and accepted by all leading Accountants, is to take such item either to "Reserve Fund" or appropriate the same in reduction of what are called "Paper Assets" such as "Preliminary Expenses."

The prescribed form does not deal with the various classes of shares such as Preference, Ordinary and Deferred, but it is presumed that what is illustrated in the case of one class, should be followed in cases of other classes of shares if any.

FUNDS.

The next heading on the Liabilities side of the Balance Sheet refers to Funds of the company, and these are as follows :—

" Reserve Fund or Development Fund."

" Any Sinking Fund."

" Any other Fund created out of the Net Profits."

" Any Pension or Insurance Fund."

" Provision for Bad and Doubtful Debts."

In most cases, and it is so invariably, that the various classes of Funds are governed by particular clauses in the Articles of Association of a company and therefore dealing with such items regard must be made to various Resolutions pass-

ed by the Directors or Shareholders in regard to each item of Funds. What is usually found in a company's Balance Sheet as a principal item of Funds, *viz.*, "Depreciation or Deterioration Fund", entirely disappears from the *pro forma* Balance Sheet. The reason is not far to seek. By a reference to the Assets side of the Balance Sheet, under the heading of "Fixed Capital Expenditure" it will be found that the prescribed form requires to be stated in every case the original cost and total Depreciation written off under each head. Thus it is laid down that Depreciation shall be shown as a deduction from Fixed Capital Expenditure on the Assets side. The question of Depreciation is discussed more fully hereafter while dealing with the item of "Fixed Capital Expenditure".

The various sub-heads of Funds are self-explanatory from their respective titles.

Reserve Fund is an amount set aside out of Profits to meet contingencies and as explained above these various Funds are governed by the Articles of Association of every company. Anent the Reserve Funds the following decision *re.* the "Internal Reserve Fund" or as it is sometimes called the "Secret Service Fund" is worth citation. In *Norton vs. Birmingham Small Arms Co. Ltd.* decided by Buckley J., in the Chancery Division, it was held that any Resolution or a Rule of Articles prohibiting the Auditors from disclosing the nature of investments of the "In-

ternal Reserve Fund" or disclosing any other information with regard to this fund is *ultra vires* the powers of the Auditors conferred on them by the Companies Act and such Resolution or Rule of Articles is therefore void and of none effect. The Auditor may not, notwithstanding any such Resolution, withhold information regarding such fund.

The 3rd sub-head "Any other Fund created out of Profits" might include "Equalisation of Dividend Fund" or even "Depreciation Fund".

The 4th sub-head "Provision for Bad and Doubtful Debts" is treated in the *pro forma* Balance Sheet as a "Reserve for Bad and Doubtful Debts" thus allowing the full amount of the debts to be shown on the Assets side. On the Assets side, however, debts that are considered either doubtful or bad are required to be shown separately, so that on the one hand may be shown a Reserve for such Bad or Doubtful Debts and such items of debts may all the same appear as Assets in the Balance Sheet.

Some companies debit Interest account with the amount of interest on the amount set aside and appearing to the credit of Reserve and other Funds and thus correspondingly increase the Funds by the amounts of interest year after year. But in a great many cases the Funds are allowed to stand without any addition for interest. Where the particular Funds are not earmarked by

specific investments in securities and are utilised by the company by mere book entries, the profits of a company are evidently subject to interest which the company would have earned by investing the Funds in other securities. There seems no provision made in the Act and since nothing has been laid down in respect of the Funds beyond merely classifying the various Funds, companies can conveniently follow their usual practice in dealing with this item in their Balance Sheets.

LOANS.

In the prescribed form these have to be shown as follows :—

1. "Loans on Mortgage or Mortgage Debenture Bonds."
2. "Loans otherwise secured" (stating the nature of security).
3. "Loans unsecured."

These heads are self explanatory.

Any obligation incurred by a company, by borrowing or raising money on Mortgage or Mortgage debentures has to be shown.

In this connection it would be well to note Section 109 of the Act, which provides for certain Mortgages and charges to be void if not registered, and Section 122 deals with "Penalties for non-compliance with the requirements of the Act".

As to Loans otherwise secured (stating the nature of the security), it is clear that any money borrowed by a company on any security the nature of such security has to be stated. For instance, if a loan is raised on the security of the liquid Assets or Stock-in-trade of a company, such fact will have to be stated in the Balance Sheet. In the case of a bank if it borrows money on the security of its investments that fact will require to be stated. The liabilities are very clearly defined by these headings, showing what part of the Assets of a company is free from incumbrance and which Assets of the company have been mortgaged or pledged. Thus if the working capital of a company is found by borrowings on its Stock-in-trade or other Assets, the true state of that company's position has to be exhibited by a clear statement of such fact in the Balance Sheet. Shareholders will not have to remain in ignorance of the true nature of a company's dealings when the Act requires a clear exposition of such items.

INTEREST

(Accrued on Mortgages, Debentures or other Secured Loans).

The item of interest appears both on the Liabilities as well as the Assets side of the Balance Sheet. It is clear that the amount due for interest on Mortgage or Debenture Bonds or on Secured Loans has to be separately stated in the Balance Sheet and not shown as an item "Ad-

justing Account" which is usually found in a company's Balance Sheet. Interest however on other accounts due but not paid might figure among grouped items in an Adjusting Account, but as a company's liability in connection with a Secured Debt is so much more by the accumulation of unpaid interest, such an item is required to be separately stated.

UNCLAIMED DIVIDENDS.

The *pro forma* Balance Sheet requires this item to be shown separately in any case, though it is not necessary to show what particular dividends have remained unpaid. Some companies are authorised by their Articles of Association to appropriate Unpaid Dividends by forfeiting them to Profit and Loss account though the form of Balance Sheet requires in one item the total amount of Unpaid Dividends, it would be better to show amounts of dividends forfeited if any.

• LIABILITIES

For goods supplied.

„ Expenses.

„ Acceptances.

„ other Finance.

This heading needs no comment. What is usually found in company's Balance Sheet under the heading of "Adjusting Account," for amounts due but not paid is now classified and required to be shown separately. In some cases the difference

of an "Adjusting Account", *i.e.*, the difference between the debit and credit side of the account was shown in the Balance Sheet, but it is clear from this prescribed form that the Liabilities should be distinct from the Assets, instead of the difference of the accumulated items of amounts due but not received and amounts due but not paid. Amounts due but not received or such items of adjustments will have to be shown under the heading of "*Advances*" on the Assets side of the Balance Sheet.

ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS.

(For the portion for which value has still to be given, *e.g.*, in the case of the following classes of companies:—Newspaper, Fire Insurance, Theatre, Club, Banking, Steamship Companies, &c.)

Monies received in advance, such as subscriptions or advertisements in the case of a Newspaper Company, premiums for a period applicable to the following year in the case of a Insurance Company, takings on receipts for a subsequent period in the case of a Theatre or Club, rebate on bills discounted in the case of a Banking Company, and freight or passage money for unfinished voyages in the case of Steamship Company, are instances that require adjustments for the purposes of a Balance Sheet and consequently such liabilities are required to be shown as Advance Payments and Unexpired Discounts.

The object is perfectly clear in as much as not to include in the Revenue or Profit and Loss account such items as these though received during the year, but as a matter of fact being receipts in advance for the following year or an unexpired period thereof, to treat all such receipts as Liabilities and not Revenue Income.

PROFIT AND LOSS.

Balance as per previous Balance Sheet.

Less—Appropriation thereof.

Balance brought forward.

Profit since last Balance Sheet.

(*N.B.*—These details need not be given if the same be contained in a Profit and Loss account attached to the Balance Sheet.)

The statement of Profit and Loss account as a rule accompanies the Balance Sheet, printed copy whereof is furnished to Shareholders, and the details are generally given in the statement of Profit and Loss by some companies showing a Profit and Loss appropriation account and others including them separately in one statement. While dealing with the question of profits it is well to note the important decision of Lindley L. J., in *Vernon vs. the General and Commercial Investment Trust Ltd.*, in which it was held :—

“That an injunction to restrain a Company
 “from paying a proposed Dividend out of
 “current profits on the ground that the
 “Capital of the Company is not intact must

“be refused if the Company is solvent and
“acting within its Articles.”

In this case Lord Justice Lindley in delivering his judgment observed :—

“That broad question raised is whether a
“limited Company which has lost part of
“its capital can lawfully declare or pay a
“dividend without first making good the
“Capital which has been lost. I HAVE NO
“DOUBT IT CAN—that is to say, there is no
“law which prevents it in all cases and under
“all circumstances. Such a proceeding may
“sometimes be very imprudent, but a proceed-
“ing may be perfectly legal and may yet be
“opposed to sound commercial principles.”

On the same point may also be noted the decision in *Bolton vs. Natal Land and Colonisation Co. Ltd.*, where it was held :—

“That a Company may declare a dividend out of current profits without being obliged to show that all its Capital is intact.”

This is the decision of Justice Romer in the Chancery Division.

Section 134 of the Act provides for a copy of Balance Sheet and Auditors' report to be forwarded to the Registrar. Hence the filling of a statement of Profit and Loss account is not compulsory and therefore it would be desirable to give the particulars required under this head in the Balance Sheet. The Registrar of the companies

might refuse to take on file a Balance Sheet that either does not give these particulars or to which is not attached a Profit and Loss account.

This is the last heading on the liabilities side of the Balance Sheet. But at the foot of the Balance Sheet have to be shown Contingent Liabilities if any.

CONTINGENT LIABILITIES.

1. Claims against the Company not acknowledged as debts.
2. Monies for which the Company is contingently liable.
3. Arrears of Cumulative Preference Dividend.

These debts are not required to be shown in the body of the Balance Sheet, since they are contingent and appear in the nature of footnotes to it.

It need hardly be pointed out that whereas Debenture interest unpaid forms an item in the body of the Balance Sheet, the arrears of Cumulative Preference Dividends have merely to be shown as a footnote. The former is a direct liability whereas the accruing of cumulative dividend is a charge on the future available profits of a company and thus the difference can readily be understood.

Dealing now with the headings on the Property and Assets side of the Balance Sheet the first heading is—

FIXED CAPITAL EXPENDITURE.

(Distinguishing as far as possible between Expenditure upon Goodwill, Land, Buildings, Leaseholds, Railway Sidings, Plant, Machinery, Furniture, Development of Property, Patents, Trade-marks and Designs, Interest paid out of Capital during Construction, etc., and stating in every case the original cost and the total Depreciation written off under each head.)

Section 107 of the Act provides for the payment of interest out of Capital in certain cases, and the *pro-forma* Balance Sheet requires that item to be shown under this head. Reference to Section 132 which provides for the contents of a Balance Sheet states the giving of such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed Assets has been arrived at. The heading "Fixed Capital Expenditure" and the term "Fixed Assets" in Section 132 might be considered as synonymous terms. Any Capital Expenditure constitutes an asset and evidently therefore "Fixed Capital Expenditure" and "Fixed Assets" must mean one and the same thing. Floating Assets, however, are quite distinct from Fixed Assets and these technical terms are exhaustively dealt with and fully explained in accountancy books. A passing remark

to show the difference between Fixed and Floating Assets for the proper comprehension of these technical terms seems necessary. Fixed Assets represent the outlay on Lands, Buildings, Machinery, Plant and Fixtures, whereas Floating Assets represent Cash, Book-Debts, or outstandings and Stock-in-trade. While the Fixed Assets remain permanent and unchanging and are not acquired for re-sale such as Land or Building and the Fixtures of Machinery or Plant, the Floating Assets are a varying item. The heading provides for the original cost of Fixed Assets under their various heads to be shown separately as far as possible. If the original cost of such Fixed Assets could be ascertained it is better to show them in separate items, but in cases of companies that have existed for a number of years it might possibly seem hopeless or very difficult to find out the original cost of each existing fixed asset, and in such a case the law allows the grouping of such items under this head. It has to be remembered that Depreciation written off under each head is also required to be shown and that is likely to present considerable difficulty in arranging the figures in the form required. The Articles of Association of nearly all companies provide for Depreciation being set apart by the Directors, and whenever the profits of a company admit of such a provision being made, a round sum is usually set apart, as is considered adequate in the opinion of the Direc-

tors. Thus the existence of what is termed a "Depreciation or Deterioration Fund" is noticed in a great number of published Balance Sheets. Though there is nothing to suggest that the creation of such a fund is prohibited by the Act, for on the liabilities side of the Balance Sheet under the heading of Funds provision seems to have been made by which such a Fund can be created if so desired, yet the first heading on the Assets side distinctly lays down that "Depreciation written off under each head" be shown along with the Assets. Hence for the purposes of closely following the prescribed form of the Balance Sheet, it becomes necessary to treat such a fund as "Depreciation Fund" as merely a Depreciation Account or Accounts and not be shown as an item of Funds.

It may here be pointed out that some companies have for a great length of time followed the practice of charging "Renewals and Repairs" to Depreciation Funds and hence it will be observed on a careful scrutiny and examination of the published Balance Sheet that the figures of Depreciation Funds fluctuate so materially from time to time. The legislature seems to have intended that depreciation be (as it ought to be) considered a legitimate charge before arriving at the figures of actual net profits of the company. But the manner in which accounts of a large number of companies, particularly manufacturing companies, are kept it would present some difficulty

before the figures of actual "Original cost" and "Total Depreciation" are arrived at. It is perfectly clear that all figures with regard to renewals and replacements must find their places in the Profit and Loss account and be not deducted from Depreciation.

It is also clear that items like Goodwill, Patents, Trade-marks and Designs and Development of Property be shown separately and similarly interest if any paid out of Capital during Construction.

PRELIMINARY EXPENSES.

The form does not define what constitute "Preliminary Expense" and what is generally done by companies in India is to charge all expenses to this account up to the time the company begins work. As a matter of fact only flotation charges ought to appear under this head. Article 107 of Table A to the Act provides that "in any cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year," and hence all charges incurred by a company upto the date of its working find place in this account.

It would however be desirable to state definitely in the Balance Sheet the amount of Preliminary

Expenses as appearing in the previous Balance Sheet together with any addition thereto during the current year and deduction if any made there-out since, so that the Shareholders can have the means of knowing what this item consists of and how it is disposed of.

COMMISSION OR BROKERAGE.

(Commission or Brokerage paid for under-writing or placing Shares or Debentures until written off.)

Upto now it was the practice to debit all such items to Preliminary Expenses and what is usually found in a Balance Sheet under the heading of Preliminary Expenses includes Law Charges, Brokerage, Commissions, Printing, Registration, and other charges. The item of commission and brokerage however will have to be separately stated until it is written off. Section 105 authorises a company to pay commission to any person in consideration of his subscribing or agreeing to subscribe for any shares in the company and Section 106 definitely requires every company to state in the Balance Sheet any sums paid by way of commission. Section 106 reads as under :—

“Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every Balance

Sheet of the company until the whole amount thereof has been written off."

Hence expenditure incurred by a company towards Brokerage or Commission on the subscription of shares or debentures should not be included in the item of Preliminary Expenses but must be stated separately in the Balance Sheet.

STORES AND SPARE GEAR.

Hitherto in companies Balance-Sheet the Stores found entry among the items of Stock-in-trade. The prescribed form however requires that items such as stores should be distinguished and shown separately from the actual Stock-in-trade.

LOOSE TOOLS.

This heading calls for no remarks. An annual Inventory giving particulars similar to the one for Stores or Stock-in-trade will furnish the materials for the Balance Sheet.

LIVE-STOCK.

Just as an Inventory is necessary for Stores, Loose Tools, &c., it is desirable to value the live-stock by an actual Inventory every year, making allowances for animals that have died or have been newly purchased during the year.

STOCK-IN-TRADE.

(Stating mode of valuation, *e.g.*, cost or market value.)

Hitherto the Stock-in-trade was shown as one collective item in company's Balance Sheet with-

out regard to valuation being cost or market price of the day. Under the prescribed form it is now necessary to state definitely as to how the Stock-in-trade has been valued. There is nothing to suggest that these should be either at cost or market price, but rigidly following the general principles of accountancy it is always advisable to state whichever price is the lower of the two. Say, for instance, the cost price of Cotton in hand is higher than the closing market price of the day, it is better to value stock at "market price." This however affects the figures of profits; and as long as nothing definitely has been laid down it is open to companies to value their stock either at cost or market price. All that the Act requires is that the mode of valuation should be stated.

Several companies and particularly Manufacturing Companies such as Mills expect an Auditor in the course of his few hours' visit to the mills at the end of the year to certify as to the accuracy of the Stock. Now it is too well known a fact that an Auditor, however clever and conscientious he may be, is not expected to be such an expert valuer or a cotton selector as to enable him to perform and discharge his duties in the manner he is expected to do. All that the Auditor does, therefore, when the duty is so improperly imposed upon him, is to go to the piles of cotton bales and count them as far as he practically could manage to, irrespective of the various description of cotton stored in the various godowns. A few hundred

bales of one description classed or added to another description would make all the difference in valuation and still (since an Auditor is not expected to be a valuer or a cotton selector) at the time of compiling the Balance Sheet the Auditor has solely to depend on the statement produced to him giving description of the various kinds of cotton stored and he has to rest satisfied by comparing the total number of bales in that statement with what he was made to count on the closing day.

Similarly a large number of piece-goods bales and stores are attempted to be counted or weighed, but it is a significant fact that Auditors are not responsible for the values thereof though they are asked to repeat this process year after year.

If, therefore, provision be made to procure an expert valuer's certificate both for the quantities and their values, the figures shown in the Balance Sheet as Stock-in-trade would be more reliable.

The final result of profit or loss would to a great extent depend upon the figures of Stock-in-trade and as several concerns remunerate the Managing Agents by a percentage on profits, it would certainly be very desirable to have stocks annually taken and valued by experts.

One point must always be borne in mind that while the quantity of stocks would include all stocks lying at the premises on the last closing day, there

might be some which was not paid for and such items should be excluded from the stock figure or if allowed to remain there, the amount unpaid for such items should be shown on the liability side of the Balance Sheet. Similarly if sales were effected and monies paid for, but the particular descriptions of goods were not delivered, these should be excluded from the stock figures, otherwise the result shown would be incorrect. This is likely to happen particularly in respect of stores received within the last few days of the annual closing. Bills or vouchers might not be submitted for a month or so by the dealers, but all such items require adjustments to exhibit a true financial position of the company.

BILLS OF EXCHANGE.

This heading does not call for any special remarks. Some call these Bills Receivable or Monies Receivable.

BOOK DEBTS. ,

(Distinguishing in the case of a Bank between those considered good and in respect of which the Bank is fully secured and those considered good for which the Bank holds no security other than the Debtor's personal security, and distinguishing in all cases between debts considered good and debts considered doubtful or bad. Debts due by Directors or other officers of the company

or any of them either severally or jointly with any other persons to be separately stated in all cases.)

This is a very important head and requires a very careful consideration, particularly in the case of a Banking Company. The form strictly lays down that all book debts should be clearly distinguished as those considered good, those considered doubtful and those considered bad. Circumstances in individual cases would alone enable one to place a debt under one of these three heads. But besides this it is also necessary to state if the debt is a secured debt or the company holds no security. As a general principle of accountancy it might be observed that bad debts are usually written off, but it may also happen in certain cases that these have not been treated so in the accounts, and would have to be shown separately. Any debt due by a Director or other officer of the company would have to be shown separately, whether such debt is due personally by him or jointly with some other persons. So that if a Firm owes monies to a company a Director of which is a member of the Firm, such debt would come under the heading of debts due by Directors. It has been suggested that in a Banking Company Mr. A. B. is a Director who endorses a Promissory Note or guarantees payment thereof in the event of the failure to pay by C. D. Ltd., a Joint Stock Company, the debt by A. B. to the Bank which is contingent on the failure of the principal borrower

(C. D. Ld.) should all the same be shown 'as debts due by Directors

So far as practicable it would seem more desirable to differentiate between the book debts as under : —

1. Debts considered good for which the company (or Bank) is fully secured.
2. Debts considered good for which the company holds no security other than the debtor's personal security.
3. Debts considered doubtful.
4. Debts considered bad.
5. Debts due by Directors either severally or jointly with other persons.
6. Debts due by officers of the company either severally or jointly with any other person or persons.

All debts for which the company holds securities enough to cover the amount of such debts should go under the first head.

All debts for which the company holds no security except the Promissory Note of the Debtor would go under the second head.

Headings 3 to 6 are clear and the items corresponding thereto may be placed under their respective heads.

Sometimes curious questions arise as to what is a security. Ordinarily taking the case of a Bank

which advances monies to Mr. A. B. on his Promissory Note and Mr. A. B. deposits shares or other Government Securities of an equivalent value, it would amount to a fully secured debt. But if a company borrowed monies from a Bank on a Promissory Note signed by the company and endorsed by its Managing Agents, the item would have to be shown as debts considered good for which the Bank holds no security other than the debtor's personal security.

In the event of a company being wound up the claims of creditors of the company would have preference over shareholders and thus any amount advanced by a Bank to the company would be a better security to the Bank than advances against shares of that company. Notwithstanding this fact monies advanced on a Promissory Note, *i.e.*, personal security, must be shown under sub-head 2.

Book Debts might with advantage be classified and shown in the Balance Sheet as under :—

1. Debts considered good and in respect of which the Bank is fully secured.
2. Debts considered good, secured by the personal liability of one or more parties in addition to the personal security of the Debtors, including Bills Discounted.
3. Debts due by Joint Stock Companies, guaranteed by their Agents, a Director of the

Bank being a member of the Firm of Agents.

4. Debts payable on demand and considered good for which the Bank holds no security.
5. Debts considered doubtful.
6. Debts considered bad.
7. Debts due by Directors personally.
8. Debts due by an officer of the Bank, other than a Director.

ADVANCES

(recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, &c.)

Ordinarily it is the practice to show in companies' Balance Sheets such items under the heading of adjusting accounts, which of course means the same thing as payments made in advance which are applicable to the next period. Monies payable by a company should not however be deducted from these advances or monies receivable.

INVESTMENTS.

(Nature of investment and mode of valuation, *e.g.*, cost or market value.)

Under this head will appear all the investments of a company other than deposits with Bankers since under the last heading in the *pro forma* Balance Sheet balances with Bankers in current

account or deposits are required to be separately stated. Hence investments in the nature of Government or other Securities, Shares and Stocks of Public Companies or Debenture or any other security will have to be stated as under :—

Government Paper (cost or market value).
 Port Trust, Municipal and City Improvement
 Trust Debentures (cost or market value).
 Preference Shares in public companies.
 Ordinary Shares in do.
 Debentures in do.

INTEREST ACCRUED ON INVESTMENTS.

Amounts due but not collected as on the date of the Balance Sheet for interests on the securities or investments, which hitherto were grouped in the adjusting account require to be separately stated in the Balance Sheet. Companies that have invested their surplus funds, by way of fixed or short terms deposits with Bankers, will have to take into account interest earned upto the closing date and show the amount under this head, instead of under the next head "Cash and other Balances."

CASH AND OTHER BALANCES.

Amount in hand.

Balance with Agents and Bankers (in detail showing whether on deposit or current account, etc.).

From the two sub-heads it is clear that the actual cash in hand requires to be shown separately from the balances in the hands of Agents or with Bankers. The words "in detail" might give rise to a point for discussion. Whether "in detail" would mean a list of the names of Agents or Bankers or a mere statement distinguishing between the amounts with Agents or with Bankers, on Fixed Deposits or Current-accounts, is a question. There is nothing to suggest that a long list giving names of Agents and Banks is necessary. But what is definitely required is that balances in Current account must be shown separate and distinct from Fixed Deposits and any amounts in the hands of Agents ought to be shown separately. Monies due by Agents would necessarily come under the heading of "Book Debts", but amounts such as petty cash or other cash balances in the hands of Agents would be required to be shown under this head.

PROFIT AND LOSS

(Giving in the case of a debit balance details as far as possible as in the case of a credit balance).

This item calls for no remarks. Losses appear on this side of the Balance Sheet just as Profits appear on the other (liability) side.

CHAPTER II.

DUTIES & LIABILITIES OF AUDITORS.

Section 144 of the Companies Act provides for the qualifications and appointment of Auditors. The section runs as under :—

144. “(1) No person shall be appointed or act as an auditor of any company other than a private company unless he holds a certificate from the Local Government entitling him to act as an auditor of companies :

Provided that the Governor-General in Council may, by notification in the Gazette of India, declare that the members of any institution or association specified in such notification shall be entitled to be appointed and act as auditors of companies throughout British India.

(2) The Local Government shall, by notification in the local official Gazette, make rules providing for the grant of certificates entitling the holders thereof to act as auditors of companies, and may by such rules provide the conditions and restrictions on and subject to which such certificate shall be granted. The holder of such a certificate shall be entitled to act as an auditor of companies throughout British India unless such certificate restricts or limits the exercise of the right.

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(4) If an appointment of an auditor is not made at an annual general meeting, the Local Government may, on application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons, that is to say--

- (i) a Director or Officer of the company ; and
- (ii) a partner of such Director or Officer ; and
- (iii) in the case of a company other than a private company, any person in the employment of such Director or Officer, shall not be appointed auditors of the company.

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting :

Provided that, if after notice of the intention to nominate an auditor has been given to the com-

pany, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the Directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The Directors may fill any casual vacancy in the office of auditors, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the Directors."

Section 145 deals with the powers and duties of Auditors :—

145. "(1) Every auditor of a company shall have a right of access at all times to the books and

accounts and vouchers of the company, and shall be entitled to require from the Directors and Officers of the company such information and explanations as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every Balance Sheet laid before the company in general meeting during their tenure of office, and the report shall state :—

(a) whether or not they have obtained all the information and explanations they have required ; and

(b) whether, in their opinion, the Balance Sheet referred to in the report is drawn up in conformity with the law ; and

(c) whether such Balance Sheet exhibits a true and correct view of the state of the company's affairs according to the best of their informations and the explanations given to them, and as shown by the books of the company.

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India. ”

PROFESSIONAL AUDITS.

These sections therefore clearly imply and indicate that the audit of companies can hereafter be performed by professional auditors only and a class of so called amateur auditors whose extreme ignorance of the veriest elements of their profession is only equalled by their utter inability to appreciate the moral responsibility of their position, must necessarily disappear in India, at least so far as the companies' audits are concerned.

It will not be denied that for the statutory discharge of responsible and onerous duties an expert is required, one who is alive to the pitfalls (and they are many) into which it is possible to fall when dealing with the technicalities which the growth of business practice demands in relation to accounts.

An Auditor is an Agent of the Shareholders and as such comes within the law relating to Agents. He must do his work properly ; if negligent he would be liable to an action. But more than that an Auditor when engaged on behalf of a company is an officer of the company (section 2, sub-section 11, and sections 235, 236 and 237) and as such may be liable to the Shareholders. But it is no part of an Auditor's duty to give advice, either to Directors or Shareholders, nor has he to do with the prudence or imprudence of making loans with or without security. His business is to ascertain the true financial position of the company at the time

of the audit. He must however be honest, straightforward and independent, and discharge his duties faithfully, conscientiously and to the best of his abilities. If he does so, he has nothing to fear. The general duties of Auditors have been discussed at length by the great Company Law Lord, Lindley L. J., in various important cases. His judgments in one or two important cases are cited below.

It is generally understood that the words "*as shown by the Books of the Company*" following upon the words "according to the best of their informations and explanations given to them" do not impliedly exempt an Auditor from travelling outside the Books. But an Auditor is bound by fair and reasonable examination of vouchers to see that there are not amongst the payments any which are not authorised or in any other way illegal or improper, and if as a reasonably prudent man he concludes on his investigations that something is wrong he ought to probe it to the bottom and call his employers' attention to the fact.

Where the Auditor thinks that the true state of the company's affairs is affected by facts relating to an external *reserve fund*, he must not withhold information regarding the same from the Shareholders.

In this connection it would be well to quote hereunder the opinion of four leading Counsels with regard to the matter. After the passing of

the Companies Act of 1900 a case was submitted to Messrs. R. B. Haldane, Q.C., M.P., C. S. Eady, Q. C. (since Mr. Justice Swinfen Eady), A. R. Kirby and F. B. Palmer, and their joint opinion was as follows :—

In our opinion the provisions contained in sections 21, 22 and 23 of the English Companies Act, 1900, are supplemental to and not in the substitution for provisions as to audit contained in the Companies Act, 1879 (where applicable), and in Articles of Association or regulations of a company, and, accordingly, we are of opinion that the Act of 1900 does not relieve an Auditor from the necessity of complying with such provisions, even though the latter imposes obligations beyond those imposed by the Act of 1879. In so far, however, as the Act of 1900 is inconsistent with the earlier provisions, the Act of 1900 must, of course, prevail.

2. In our opinion the words “ books of the company ” in section 23 which gives to the Auditor a right of access at all times to the books and accounts and vouchers of the company, mean all the books—not merely the books of accounts of the company; the words, therefore, include the minute books and letter books.

3. In our opinion the word “ requirements ” in section 23, which makes it necessary for the Auditor's certificate to state whether or not his requirements as Auditor have been complied with,

is used in its popular sense, and not as referring merely to what he is entitled to require under the preceding words of the section.

4. In our opinion, where the Auditor's requirements are not complied with, the Auditor should specify in his certificate in what respects they have not been complied with ; and if there is no Balance Sheet on which to place the certificate, then the Auditor should so specify in his report. But if the specification of the instances of non-compliance be lengthy, we see no objection to the certificate stating that all the requirements have not been complied with without specification of details, provided that it refers to the report for the details.

5. In our opinion the certificate and report referred to in section 23 must be separate and separately signed, even though both be placed on the Balance Sheet. There would, however, be no objection if it be desired to connect the certificate with the report by inserting in the certificate reference to the "subjoined" or "accompanying" report ; and, as an alternative, where thought expedient, the certificate might set out the report *verbatim*, thus : I certify, etc., and I report to the Shareholders that, etc.,—(signed) A. B.—If, however, this course be adopted it will, in our opinion, still be necessary that the Auditor should make and sign the report separately, and send it in to the Directors to be placed before the Shareholders.

'A FORM OF CERTIFICATE TO BE GIVEN BY AN AUDITOR.

In accordance with the provisions of the Indian Companies Act of 1913, I certify that all my requirements as an Auditor have been complied with.

I have examined the above Balance Sheet with the books and vouchers of the company, and in my opinion such Balance Sheet is properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, according to the best of my informations and the explanations given to me and ~~Was~~ shown by the books of the company, and I certify that such Balance Sheet is drawn up in conformity with law.

Auditor.

REPORT BY AN AUDITOR.

Section 145 imposes a duty upon Auditors to make a report and circumstances might occasion the publishing of an unfavourable Report on the affairs of a company by its Auditor. The Auditor is then placed not only in a very responsible but also a very unpleasant and difficult position. In cases where an Auditor finds it necessary to unfavourably criticise the accounts, a difficulty, not unnaturally sometimes, might arise as to the precise wording of the Auditor's Report and the Directors might bring pressure to bear on the Auditors with a view to securing a modification of its nature and contents, urging the plausible

argument that unfavourable statements published broad cast, accessible not merely to Shareholders but also to creditors and competitors, might easily have the effect of seriously injuring the company, whose interests the Auditor was so far as practicable bound to consider. There are, it may be mentioned, cases upon record in which the Auditor has been held to be negligent in the discharge of his duties in not taking adequate steps to see that the Shareholders were made cognisant of the contents of a special report which he had submitted on the accounts of a company and which had not been printed (*vide* London and General Bank case No. 2 L. R. 1895, 2 Ch. 673, Court of Appeal 1895, cited below).

It will be seen that the Auditor should be some independent person called in to examine the accounts (for the actual preparation of which he is not responsible), and to report therein to those persons to whom the managers of the undertaking have to account.

Extracts from the Judgment of Lindley, L. J. in
London and General Bank Case, 2 L.
R., Ch. 673 (1895).—

“Held that an Auditor is guilty of misfeasance who, when dissatisfied with the accounts of a company, does not plainly draw attention to the grounds for his dissatisfaction in his certificate.”

In this case, the Liquidator claimed against the Directors and Auditors to have made good by

them certain dividends that had been paid out of the capital and not out of income.

The Auditor had reported confidentially to the Directors as to the insufficiency of the assets, but to the Shareholders he had only reported that *the value of the assets was dependent on realisation*. Here was an obvious shortcoming, and the Auditor was held liable to make good the dividends paid.

Lord Justice Lindley there said : " It is no part of an Auditor's duty to give advice, either to Directors or Shareholders as to what they ought to do. An Auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duties to the Shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that ; but . . . he does not discharge his duty by (examining the books) without enquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this his audit would be worse than an idle farce. . . . An Auditor, however, is not bound to do more than exercise reasonable care and skill in making enquiries and investigations. He is

not an insurer ; he does not guarantee that the books do correctly show the position of the company's affairs ; he does not even guarantee that his Balance Sheet is accurate according to the books of the company. . . . Where suspicion is aroused more care is obviously necessary ; but still, an Auditor is not bound to exercise more than reasonable care and skill, even in a case of suspicion, and he is perfectly justified in acting on the opinion of an expert where special knowledge is required."

This decision confirmed the judgment of Mr. Justice Stirling in an earlier case, *Leeds Estate vs. Shepherd* (1887), where the Auditor's duties were similarly defined, and where his negligence was held to render him liable for damages under similar circumstances.

Another case, now more frequently referred to, is *in re Kingston Cotton Mill Company, No. 2* (1896). There it was attempted to make the Auditors liable, as in the case of the London and General Bank, the question turning on the valuation of stock, and Mr. Justice Vaughan Williams held them liable. The Court of Appeal reversed that decision, holding that Auditors were not called upon to take stock, and were justified in relying upon the certificates of a manager of acknowledged competence and reputation in the absence of anything to raise suspicion.

Lord Justice Lindley relied upon his definition of an Auditor's duties given in the London and

General Bank case, and protested against the notion that an Auditor is bound to be suspicious as distinguished from being reasonably careful.

In other cases the action may be an ordinary one for negligence in carrying out the duties which a person has undertaken.

In *Moad vs. Ball, Baker, & Co.* (1911) a claim was made against accountants for damages due to alleged negligence in the investigation of the accounts of a business in which the plaintiff proposed to invest and did afterwards invest money. He failed to prove negligence, the question again turning on the Stock Valuation.

The Master of the Rolls said that although it was not the duty of accountants to take stock they might well call for explanations of particular items.

It may be mentioned that in the above cases the procedure adopted was against the Auditors as "officers of the company" under Misfeasance Summons. This procedure is governed by Sections 235, 236 and 237 of the Indian Companies Act, 1913. Section 2, sub-section 11 defines an "officer" and includes any Director, Manager, or Secretary but save in Sections 235, 236 and 237 does not include an Auditor. Under these sections the Court may, on the application of a Liquidator on the winding-up of a company, examine into the conduct of an Auditor and compel him to repay or restore money or property with interest.

LEGAL DECISIONS.

It has been stated by Lord Justice Davey that "an Auditor" is bound to know everything that the books tell him, to have all the suspicions that the books suggest and to make all the inferences to which what he finds in the books would lead him."

In the case of the Leeds Estate Building and Investment Society Ltd. *vs.* Shepherd (which was decided in the Chancery Division in 1887, 36 Ch. 787) it was held that it was the duty of an Auditor not to confine himself merely to the task of ascertaining the arithmetical accuracy of the Balance Sheet, but to see that it was a true and accurate representation of the company's affairs.

In this particular case it was clear that the Auditor had failed in his duties, in that he had made no attempt to ascertain the substantial accuracy of the Balance Sheets set forth from time to time. The direct result of his negligence was that dividends and commissions were improperly paid out of the capital moneys of the undertaking, and as a result he was held liable, jointly and severally with the Directors, to reimburse to the company the amount so improperly paid out; such liability being, however, limited by the Statute of Limitations to a period of six years from the commencement of the action.

In the case of *Martin vs. Isitt* (a jury case heard in the Court of King's Bench in 1898), an action

was brought against a firm of Auditors for negligence in not checking the cash book and the bank pass-book, whereby a clerk was enabled undiscovered to embezzle certain moneys, the property of the plaintiffs. It was alleged in this case that there had been an undertaking that the books should be checked monthly, and it was further alleged that it was owing to the defendants allowing their work to get into arrear that the frauds remained undetected. On behalf of the defendants it was stated, that it was through the negligence of the plaintiffs in allowing their clerks to get behind with their work that the delay in the audit—which itself was unavoidable under the circumstances—had occurred. The case was settled in Court, and therefore affords no definite guidance upon the subject at issue.

Of more importance is the decision of the Irish Court of Appeal in the case of the Irish Woollen Company, Ltd. *vs.* Tyson and others decided early in 1900. Here it was sought to make the Auditor liable, for having failed to discover the fraudulent manipulation of the books which had been committed by certain officers of the company who had charge of the accounts. These falsifications came under three headings, namely :—

- (1) The overstating of the value of the Stock-in-trade.
- (2) The overstating of the value of the book debts.

- (3) The understating of the company's liabilities to its trade creditors.

With regard to the Stock-in-trade it was held (following the Kingston Cotton Mills case, which will be dealt with shortly), that the Auditor was not responsible, and it was also held that no negligence had been proved against him in failing to discover that an insufficient provision had been made for losses arising from bad and doubtful debts. With regard to the understatement of the liability to trade creditors, however, the Court held that a reasonably careful examination of the books would have disclosed sufficient irregularities to put the auditor upon a full inquiry, and it therefore held that in omitting to discover these inaccuracies he had failed to use reasonable diligence and skill, and was accordingly liable in damages for such losses as had been sustained. As to the exact amount of the damages, it was held that that would depend upon the losses the plaintiff had suffered, taking all the circumstances of the case into consideration. The Court thought that it had not before it all these circumstances, and that in consequence it would be premature at that stage to assess the actual amount.

WATCH DOG BUT NOT A BLOODHOUND.

The next case of any importance is that *in re* The Kingston Cotton Mills Company Ltd., 1896, 1 Ch. 331, 2 Ch. 279. In this case it was decided by Mr. Justice Vaughan Williams that an Auditor

was not responsible for the value attached in the company's Balance Sheet to such fixed assets as lands and buildings, even although that value might be greatly in excess of any price that could be realised. His Lordship, held, however, that an Auditor was not justified in relying upon the certificate of the managing director as to the amount and the value of the Stock-in-trade, and that in so doing he was guilty of negligence, even although he definitely stated to the Shareholders the source of information. This latter decision with regard to the Stock-in-trade was, however, overruled by the Court of Appeal in 1896. Lord Justice Lopes in the course of his judgment made (p. 288) some very interesting remarks upon the duties of Auditors :—

“It is” his Lordship said, “the duty of an auditor to bring to bear on the work he has to perform that skill, care, and caution which a reasonably competent, careful and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch dog, but not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely upon their representations provided he takes reasonable care. If

there is anything calculated to excite suspicion he should probe it to the bottom, but in the absence of anything of that kind he is only bound to be reasonably cautious and careful. His lordship then referred to the circumstances which led to the auditors being deceived, and came to the conclusion that they were not wanting in skill, care or caution in accepting the figures of the manager, and he concluded as follows: "The duties of auditors must not be rendered too onerous. Their work is responsible and laborious, and the remuneration moderate. I should be sorry to see the liability of auditors extended any further than *in re* The London and General Bank. Indeed, I only assented to that decision on account of the inconsistency of the statement made to the directors with the Balance Sheet certified by the auditors and presented to the shareholders. This satisfied my mind that the auditors deliberately concealed that from the shareholders which they had communicated to the directors. It would be difficult to say this was not a breach of duty. Auditors must not be made liable for not tracking out ingenious and carefully laid schemes of fraud, when there is nothing to arouse their suspicion, and when those frauds are perpetrated by tried servants of the company, and are undetected for years by the directors. So to hold would make the position of an auditor intolerable."

In connection with this case it is important to bear in mind that although an auditor is justified

In relying upon the trusted officers of a company in questions as to the value of assets, he is, of course, only justified in so doing so long as he himself honestly believes the accounts to be correct. If, for any reason, the auditor's suspicions are aroused, or even if he be of opinion that the person making a valuation is incompetent to do so, then clearly he cannot rely upon their figures, because he cannot, while adopting them, honestly state that in his opinion the Balance Sheet properly discloses the true position of affairs.

Of purely technical interest is the decision given by the Court of Appeal in 1897 in the case of the Western Counties Steam Bakeries and Milling Company Ltd., 1897, 1 Ch. 617, in which it was held that when no proper appointment of auditors had been made in due compliance with the regulations of the undertaking, then the persons who had acted as auditors, and professed to be auditors of the company, could not be held to be "officers" of the company within the meaning of section 10 of the Companies (Winding-up) Act, 1890, and that, consequently, the misfeasance procedure could not be employed against them.

Another decision of minor interest is that delivered by Mr. Justice Cozens-Hardy in 1900 *in re Joseph Hargreaves Ltd.*, in which it was held that when the auditor had refused to pass the accounts, he could be held responsible for any actions of the Directors, such as the improper pay-

ment of dividends, etc., and that it was no part of the duty of the auditor to take special steps to see that the shareholders were fully advised of the position. The interest of this decision lies in the fact that it definitely limits the responsibility of an auditor to his certificate and report, leaving to the directors the sole responsibility of seeing that the shareholders are acquainted with the contents of these documents.

The only decision of the House of Lords in connection with misfeasance cases is that delivered in August 1901 in the *National Bank of Wales* case (*Dovey v. Cory*) 1901, A.C. 477. The responsibilities of auditors did not arise here, as the proceedings were only taken against one of the directors of the company; but it seems desirable to briefly mention the case as the report of the judgment appears to indicate that the Members of the House of Lords took a somewhat less strict view of the responsibilities of the auditors than the Courts below. That is to say, Supreme Court appears to have a better appreciation of the difficulties in the way of any who tries, however honestly, to produce true accounts of a going concern, and to be disposed to allow all reasonable latitude for honest mistakes.

With regard to the criminal liability of auditors, there is only one case in which the auditors of an undertaking have been held criminally responsible for a false certificate. The case referred to is the trial of the auditors which took place in the Isle of

Man in 1900. This case was tried under the Manx Criminal Code of 1872 ; but almost identical provisions are to be found in the Larceny Act of 1862, rendering it a criminal offence to join in the issue of false Balance Sheets, knowing them to be false and with the intent to deceive.

It may be added that as the Companies (Winding-up) Act, 1890, simplified the procedure against auditors in the case of a company that had gone into liquidation, so the Companies Act, 1900, has, to some extent, simplified the institution of criminal proceedings against persons guilty of fraudulent misstatements of accounts. This is provided for in section 28, which reads as follows :—

“If any person in any return, report, certificate, Balance Sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour ; and in either to a fine in lieu of, or in addition to, such imprisonment as aforesaid : Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.”

It may be mentioned that the chief difference between the above section and section 84 of the Larceny Act, 1862, is that the words "with intent to deceive" have been omitted. It is obvious, however, that no one would ever be convicted of a criminal offence in respect of an act committed inadvertently. The words in section 28 "knowing it to be false" are sufficient to define the obvious meaning of the Legislature, that only persons having a criminal intention should be liable to conviction. It may be mentioned further that section 28 provides for the first time for a fine being inflicted in addition to a sentence of imprisonment.

In this connection it would be well to refer to section 282 of the Indian Companies Act, which reads as follows :—

"Whoever in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of the Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Passing on to the correct treatment of premiums, it was formerly usual to at all times credit these to reserve fund, as being profits, but not profits earned in the ordinary course of carrying on business. It would now appear, however, that

the New Companies Act has imposed a more drastic mode of treatment. It has been decided by the Court of Appeal (in *Burrows vs. Matabele Reefs and Estates Co. Ltd.*, 1901, 2 'Chap. 23) that, the premium receivable upon the issue of Company's shares is as much a part of the capital of the company as the face-value of the issued shares itself. If that be really so, it follows that under no circumstances whatever must these premiums be distributed as dividend, and therefore that it is not correct to place them to the credit of the reserve fund, which is, of its nature, available for distribution at any time that may be thought fit. It would thus appear that premiums realised on issue of shares should be credited to a special account that must be permanently upheld as a liability upon the Balance Sheets. This treatment can, however, hardly be imperative in the case of an issue of debentures. It is true that the case is hardly likely to arise, as it is certainly not usual to issue debentures at a higher price than that at which they will be redeemed; but irredeemable debenture stock might, of course, quite conceivably be issued at a premium. It is thought that this premium need not necessarily be capitalised in perpetuity.

CHAPTER III.

LIMITED COMPANIES' STATUTORY REQUIREMENTS.

The various statutory requirements as regards Limited Companies, under the Indian Companies Act of 1913, are set out in the following summary.

MEMORANDUM AND ARTICLES OF ASSOCIATION.

I. Forward to the Registrar printed copies of Memorandum and Articles of Association (section 22) duly signed by each Subscriber and stamped and witnessed (sections 9 and 19), together with statement of Nominal Capital and statutory declaration. Pay Fees on Registration (see Table of Fees, Table B of the Act).

The terms of the Memorandum must not be altered except in the manner prescribed by the Act, *vide* sections 10, 11, 12, 50, 54, 55 to 65 and 69.

* II. Supply copies of Memorandum and Articles of Association to members, if so required, on payment of fee of Re. 1 (section 25) or less as may have been prescribed by the Articles.

NAME OF THE COMPANY.

III. Fix a signboard bearing the company's name in legible characters outside the Registered

Office, and have same legibly engraven on Seal and use it in all Notices and Papers and on all Official documents, including cheques, &c. (sections 73 and 74).

BOOKS.

IV. Keep the following books :—

1. Register of Members (section 31).
2. Register of Mortgages (section 123).
3. Register of Directors and Managers (section 87).
4. Minute Book (section 83).
5. Annual List and Summary (section 32).

REGISTER OF MEMBERS.

V. (1) Allow Shareholders (gratis) and other persons (on payment of Rupee One) to inspect the same (section 36).

(2) Close Register (if required) for period not exceeding 30 days (section 37).

DOCUMENTS TO BE SENT TO REGISTRAR.

VI. (1) Filing of Prospectus. Copy of Prospectus signed by every person named as Director or proposed Director (section 92).

(2) Particulars of Prospectus (section 93).

(3) Statement in lieu of Prospectus, signed by the Directors or proposed Directors, before first allotment of shares (section 98.)

RESTRICTIONS ON COMMENCEMENT OF BUSINESS.

(4) Statutory declaration that requirements of section 103 have been complied with to be filed (section 103).

RESTRICTIONS ON APPOINTMENT OR ADVERTISEMENT OF DIRECTORS.

(5) Consent of Director to act, and contract to take qualification shares (section 84).

REGISTERED OFFICE OF THE COMPANY.

(6) *Situation of Office* :—Give notice to Registrar of situation, Change in situation or place where a British Register is kept (section 41, sub-sections 2 and 3 and section 72).

STATUTORY MEETING OF THE COMPANY (SECTION 77).

(7) Forward a report called the Statutory Report to every member of the company. The report to be certified as correct by the Auditors of the company, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company (sub-section 4 of section 77). File with the Registrar forthwith after sending copy to the members (sub-section 5 of section 77).

ANNUAL LIST AND SUMMARY.

(8) Copy of Annual List and Summary made up to the 14th day after the first or only ordi-

nary general meeting in each year to be filed (section 32).

REGISTER OF DIRECTORS.

(9) Copy of Register of Directors and Notification of any changes therein to be filed (section 87).

(10) Return of any Allotments, within one month of allotment to be filed (section 104).

(11) Statement of commission paid or payable on issue of shares to be disclosed in the Prospectus or statement in lieu of Prospectus to be filed with the Registrar (section 105).

(12) Notice of any consolidation of shares or conversion of shares into stock or re-conversion to be filed with the Registrar (section 51).

(13) Notice of any increase in Capital to be filed (section 53).

(14) Office copy of any order of Court, sanctioning re-organisation of Capital, to be filed within 21 days (section 54).

(15) Printed copy of all Special and Extraordinary Resolutions to be filed within 15 days from confirmation of Resolutions (section 82).

MORTGAGES OR CHARGES.

(16) Particulars of mortgages or charges as required by section 109 within 21 days after date of creation to be filed and a certificate from the Registrar obtained to that effect (section 114).

NOTE :—Endorsement of Certificate of Registration on Debenture or Certificate of Debenture Stock to be made (section 115).

(17) Memorandum of satisfaction of Mortgage or Charge and Declaration verifying same (section 121).

RECEIVER.

18. Notice of appointment to be given to the Registrar within 15 days from date of order of appointment (section 118).

(19) Accounts of Receivers to be filed (section 119).

WINDING UP.

(20) Notice of Liquidator's appointment to be filed within 21 days after his appointment (section 208).

(21) Liquidator's accounts (where winding up is not concluded within one year) to be filed (section 244).

(22) Liquidator's return of the holding of the Final Meeting to be filed within one week after the meeting in case of voluntary winding up (section 217, sub-section 3).

(23) Companies incorporated outside British India are required to file with the Registrar :—

(a) A certified copy of the Charter, Statutes or Memorandum and Articles of the company.

- (b) The full address of the registered or principal office of the company.
- (c) A list of Directors and Managers of the company.
- (d) The names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process or notice (section 277).

24. Every company to which section 277 applies is required to file with the Registrar of the province in which the company has its principal place of business, an annual Balance Sheet.

MEETINGS.

VII. 1. Statutory meeting to be held within a period of six months from the date at which the company is entitled to commence business (section 77).

2. General meeting to be held once at least in every year and not more than 15 months after the holding of the last preceding general meeting (section 76).

3. Extraordinary general meeting to be held, notwithstanding anything in the articles, on the requisition of the holders of not less than one-tenth of the issued share Capital (section 78).

Every Special and Extraordinary Resolution to be printed and be embodied in or annexed to

every copy of the articles issued after the date of the Resolution (section 82).

4. Print and embody all special Resolutions in Articles of Association and file same within 15 days from confirmation with the Registrar (section 82).

QUALIFICATION OF DIRECTORS.

VIII. Every Director must obtain his qualification within two months after his appointment (section 85).

RESTRICTION AS TO ALLOTMENT.

1. Minimum subscription must be obtained before allotment (section 101).

2. If the conditions contained in section 101 are not complied with on the expiration of 120 days after the first issue of the Prospectus all monies received from applicants shall be forthwith repaid (section 101, sub-section 4).

3. An allotment made to an applicant in contravention of the provisions of section 101 shall be avoidable at the instance of the applicant (section 102).

RESTRICTION ON COMMENCEMENT OF BUSINESS.

1. Obtain certificate to commencement of business (section 103).

PARTICULARS OF PROSPECTUS.

1. To see that the specific requirements as to publication of Prospectus are complied with (sections 93 to 97).

2. File statement in lieu of Prospectus where no prospectus is issued (section 98).

PAYMENT OF INTEREST OUT OF CAPITAL.

1. Powers of company to pay interest out of Capital are defined (section 107):

CERTIFICATES OF SHARES.

1. Prepare and have ready for delivery certificates for shares or debentures within three months after allotment or registration of the transfer.

RIGHT OF INSPECTION.

1. Right to inspect copies of Instruments creating Mortgages and Charges and company's Register of Mortgages by any creditor or member of the company without fee (section 124).

2. Members and Debentures-holders to have a right to inspect and have copies of Debenture Trust Deed under certain conditions (section 125).

COMMISSION AND DISCOUNTS.

1. Power to pay commission for procuring or agreeing to procure subscription for shares (section 125).

2. Show the amount of commissions and discounts not written off in each Balance Sheet (section 106).

AUDITORS.

1. Appoint Auditors having qualifications defined in section 144.

2. Powers and duties of Auditors (section 145)

LEGAL MINIMUM NUMBER.

Minimum number of the members to be seven (section 147) except in case of a private company.

CONTRACTS.

Rules as to contracts on behalf of company and the mode of entering into contracts are provided for in (section 88).

BALANCE SHEET.

1. Annual Balance Sheet to be prepared and audited (section 131).

2. Contents of Balance Sheet to be according to Form F (section 132).

3. To be signed by the Manager and in the case of a Banking Company and when there are more than three Directors by at least three Directors. In the case of any other company to be signed by two Directors.

4. Copy to be forwarded to Registrar signed by the Manager or Secretary along with the annual list of members and summary in accordance with the requirements of section 32 (section 134).

5. Members to be entitled to copies of the Balance Sheet and the Auditor's Report (section 135).

CHAPTER IV.

PENALISING SECTIONS

under the
Indian Companies Act VII of 1913.

OBJECT.

MEMORANDUM AND ARTICLES.

Sections

Penalty

- 25 A Company shall be liable to pay a fine for each offence in the event of its making a default to send to any of its members at his request a copy of Memorandum and Articles on payment of the prescribed fee not exceeding Re. 1 per copy.

**Fine Rs. 10
each offence.**

- 50 A Company making any alteration in its Memorandum of Association as provided by this section and thereafter issuing any copy of the Memorandum without embodying such alterations shall be liable to a fine and every officer of the Company knowingly authorising or permitting the default shall be likewise liable.

**Fine not
ceeding Rs.
for each copy
respect of wh
default is ma**

REGISTER OF MEMBERS.

- 31 A Company in the event of its making default to keep in one or more books, a register of its members embodying the particular prescribed by

**Fine not e
ceeding Rs. 50
every day dur
which the defa
continues.**

this section shall be liable to a fine and every officer of the Company knowingly and wilfully authorising or permitting the default shall also be liable to a fine.

- 36 A Company refusing to give inspection of or a copy of its Register of Members to any other person subject to the provisions of this section shall be liable to a fine and every officer of the Company knowingly authorising or permitting the refusal shall also be liable to a fine. **Fine not exceeding Rs. 20 for each refusal and for every day during which the refusal continues.**
- 41 A Company having a Branch office in the United Kingdom and opening in British Register of Members shall file a notice with the Registrar as prescribed by this section and in the event of default therein shall be liable to a fine. **Fine not exceeding Rs. 30 for every day during which the default continues.**
- 47 A Company making a default in entering in the Register of Members the particulars required by this section to be entered in case of Share-Warrants being issued by such Company shall be liable to a fine and every officer of Company knowingly continuing or permitting the default shall likewise be liable to a fine. **Fine not exceeding Rs. 50 for every day during which the default continues.**

- 32 A Company having a Share Capital failing to make a list once at least in every year of all persons who are members of the Company and who may have ceased to be members from the date of last return or date of incorporation and failing to prepare and file such annual list and summary as is prescribed by this section shall be liable to a fine as also every officer of the Company knowingly and wilfully authorising or permitting the default shall be liable to a fine.
- Fine not exceeding Rs. for every default continues.**

CAPITAL.

- 51 A Company failing to file with the Registrar a notice of consolidation of Share Capital or conversion of shares into stock or re-conversion of stock into shares shall be liable to a fine and every officer knowingly permitting the default shall also be liable to a fine.
- Fine not exceeding Rs. for every default continues.**
- 53 A Company failing to file with the Registrar a notice of increase of its registered Share Capital or of increase of the registered number of members in case of a Company not having a Share Capital shall be liable as also every officer of such Company knowingly permitting the default.
- Fine not exceeding Rs. for every default continues.**

- 62 A Company whose Capital is reduced subject to the provisions of section 55 failing to embody the approved minute of such reduction in every copy of the Memorandum issued after such reduction shall be liable to a fine and every officer of the Company permitting the default shall likewise be liable to a penalty.
- 64 Any officer of the Company wilfully concealing the name of any creditor entitled to object to the reduction of the Capital or wilfully misrepresenting the nature or amount of debt or claim of any creditor and any officer abetting such concealment or misrepresentation shall be liable.

Penalty.

Fine not exceeding Rs. 10 for each copy in respect of which the default is made.

Imprisonment which may extend to one year or fine or both.

DIRECTORS.

- 70 Where the liability of Directors of a Limited Company is unlimited, the Directors of the Company and any member proposing any person for election or appointment to the office of a Director shall add to the proposal a statement that the liability of the person holding that office will be unlimited and any Director or member making default herein shall be liable.

Fine not exceeding Rs. 1,00 and any damages sustained by the person so elected or appointed.

71

A Company rendering the liability of its Director or Directors unlimited by a special resolution in pursuance of this section and thereafter issuing any copy of its Memorandum without embodying such Resolution shall be liable and every officer of the Company knowingly permitting the default likewise liable.

Fine not exceeding Rs. 500 for each copy of the default made

REGISTERED OFFICE.

72

A Company carrying on business without notifying in writing to the Registrar of the situation or a change in situation of the Registered Office shall be liable.

Fine not exceeding Rs. 500 for every day during which the default continues.

NAME OF THE COMPANY.

74

A Company not exhibiting its name on the outside of its office or not using the Company's name on all Bill heads, Letter Papers, Notices, Advertisements, and other Publications as required by section 73 shall be liable.

Fine not exceeding Rs. 500 for every day on which the default is made

Any officer of a Limited Company or any person on its behalf using or authorising the use of any seal not bearing the name of the Company or issuing any Paper, Bill head, Publication, &c., or signing or authorising to be signed any Bill of Exchange,

Fine not exceeding Rs. 500 and shall be liable for payment of Bills of exchange, Cheques, &c., unless the same is paid by the Company

Hundi, Promissory Note, Endorsement, Cheques or order for goods, &c., wherein the Company's name is not mentioned shall be liable.

- 75 A Company stating in any Notice, Advertisement or other Publication the amount of the authorised Capital and not stating in equally prominent position and character the amount of the subscribed and paid-up Capital shall be liable and every officer of the Company knowingly a party to such default shall likewise be liable. **Fine, not exceeding Rs. 1,000**

MEETING.

- 76 A Company not holding a general meeting once at least in every year and not more than 15 months after the holding of the last preceding general meeting shall be liable and every officer of the Company knowingly a party to the default shall likewise be liable. **Fine not exceeding Rs. 500.**
- 77 Every Director of the Company knowingly and wilfully omitting to send a statutory report at least 10 days before the date of the statutory meeting as required by sub-section 2 of this section or omitting to file with the Registrar a certified copy of such report in pursuance of sub-section 5 shall be liable. **Fine not exceeding Rs. 20 for every day during which the default continues.**

A Company having passed a special Extraordinary Resolution omitting to file a printed or type-written copy of such Resolution with the Registrar within 15 days from the confirmation of the Special Resolution or from the passing of the Extraordinary Resolution shall be liable.

Penalty
Fine not exceeding Rs. 100 for every day during which the default continues.

A Company not embodying in or annexing to a copy of its Articles a copy of the Special or Extraordinary Resolution or not forwarding in print a copy of such Resolution to any member at his request as directed by sub-section 273 shall be liable.

Penalty
Fine not exceeding Rs. 100 for each copy in respect of which the default is made.

84 Any person applying for the registration of Memorandum and Articles of a Company and filing with the Registrar a list of persons who have consented to be Directors of the Company shall, if such list contains the name of any person who has not consented, be liable.

Penalty
Fine not exceeding Rs. 100

85 Any person not holding the qualifying shares and acting as a Director without such qualification after the expiration of the period within which he should have obtained the qualification shall be liable.

Penalty
Fine not exceeding Rs. 100 for every day between the expiration of the period and the last day on which he acted as Director.

87

A Company not keeping at its Registered Office a register of the names, addresses and occupations of its Directors and not filing a list thereof with the Registrar or omitting to notify any change therein shall be liable as also every officer knowingly permitting the default.

Fine not exceeding Rs. 50 for every day during which the default continues

PROSPECTUS.

92

A Company issuing a prospectus and every person knowingly a party to such issue without filing with the Registrar a copy thereof properly dated and signed as required by this section shall be liable.

Fine not exceeding Rs. 50 for every day from the date of issue until the filing of a copy thereof.

103

Any Company commencing business exercising borrowing powers without obtaining from the Registrar a Certificate to commence business after complying with the formalities laid down by this section shall, without prejudice to any other liability, be liable.

Fine not exceeding Rs. 500 for every day during which the default continues.

104

If a Return of the allotment of shares is not filed with the Registrar in pursuance of this section every officer of the Company knowingly a party to the default shall be liable.

Fine not exceeding Rs. 500 for every day during which the default continues.

- 108 A Company not issuing the Certificates of Shares, Debentures, &c., within 3 months after the date of allotment or the registration of transfer, as the case may be, shall be liable and every officer of the Company knowingly a party to such default shall likewise be liable. **Fine not exceeding Rs. 100 every day which the default continues.**
- 118 Any person obtaining an order for the appointment of a Receiver of the property of a Company or making such appointments under the powers contained in the Instrument of Debenture and omitting to notify such appointment to the Registrar shall be liable. **Fine not exceeding Rs. 100 for every day which the default continues.**
- 119 A Receiver of the property of a Company appointed in pursuance of Debenture Instrument failing to file with the Registrar an abstract of his receipts and payments once in every half-year while he remains in possession shall be liable. **Fine not exceeding Rs. 50 every day which the default continues.**
- 122 A Company making default in filing with the Registrar for registration particulars of any mortgage or charge created by the Company or of the **Fine not exceeding Rs. 100 every day which the default continues.**

Section 109. issues of Debentures requiring registration under section 109 shall be liable and every officer of the Company or other person knowingly a party to the default shall be liable unless the registration has been effected on the application of some other person.

Penalty.

Any person knowingly and wilfully permitting the delivery of any Debenture requiring registration without a copy of the certificate of registration being endorsed upon it shall on conviction be liable.

Fine not exceeding Rs 1,000.

Subject as aforesaid a Company making a default in complying with any of the requirements of the act as to registration of any mortgage or charge created by the Company and every officer knowingly permitting the default shall, without prejudice to any other liability, be liable.

Fine not exceeding Rs. 1,000.

123 A Director, Manager or other officer of a Company knowingly authorising or permitting the omission of any entry required to be made in the Register of Mortgages in pursuance of this section shall be liable.

Fine not exceeding Rs. 500.

Sections

Penalty

- 124 A Company refusing inspection of the Register of Mortgages and Charges or of the Register of Debenture-holders or of a copy of the Debenture Instrument or refusing to give a copy of such Register kept at the office shall be liable as also every officer permitting such refusal shall be liable.
- 125 **Fine not exceeding Rs. 20 for each day during which the refusal continues.**

BALANCE SHEET.

- 131 A Company failing to prepare a Balance Sheet once at least in every year and to have it audited and send such audited copy to every member of the Company at least seven days prior to the date of meeting as required by this section shall be liable as also every officer of the Company wilfully permitting the default.
- 133 A Company issuing, circulating or publishing a Balance Sheet that has not been signed by the Directors and Manager as directed by this section shall be punishable and every officer of the Company who is knowingly a party to the default shall likewise be punishable.
- 134 A Company making a default in filing with the Registrar a copy of the Balance Sheet that has been laid before the general meeting and every
- Fine not exceeding Rs. 500.**
- Same fine imposed for filing of annual statement and sum under section**

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| Sections | officer of the Company knowingly a party to the default shall be liable. | Penalty. |
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| 136 | A Company being a limited Banking Company or an Insurance Company, or a Deposit, Provident or Benefit Society (except a Life Assurance Company, or Provident Insurance Society to which the Indian Life Assurance Companies Act of 1912 or the Provident Insurance Societies Act, 1912, applies) failing to make and display a statement in the form marked G in the third Schedule at the time and in the manner required by this section shall be liable as also every officer of the Company knowingly permitting the default. | Fine not exceeding Rs. 50 for every day during which the default continues. |
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| 137 | Any officer of a Company refusing or neglecting to furnish any information or explanation required by the Registrar in exercise of the powers conferred on him by the section shall be liable. | Fine not exceeding Rs. 50 in respect of each offence. |
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&
142 | Any officer of a Company refusing to produce any book or document or answer any question relating to the affairs of the Company to an Inspector or Inspectors appointed by the Local Government or by a Company by Special Resolution for investigat- | Fine not exceeding Rs. 50 in respect of each offence. |
|-----------------|---|---|

Sections	ing the affairs of a Company in pursuance of these sections shall be liable.	Penalty
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WINDING-UP.

- 206 A Company making a default in giving notice of any Special or Extraordinary Resolution for voluntary winding up, within 10 days of passing of the same, by advertisement in the Local Official Gazette, etc., shall be liable and every officer knowingly and wilfully permitting the default shall likewise be liable. **Fine not exceeding Rs. 50 every day on which the default continues.**
- 208 A Liquidator in a voluntary winding up failing to file with the Registrar, within 21 days after his appointment, a notice of his appointment in the form prescribed shall be liable. **Fine not exceeding Rs. 100 every day on which the default continues.**
- 217 In case of a voluntary winding up as soon as the affairs of the Company are fully wound up the Liquidator shall call a general meeting of the Company for placing before it an account of the winding up and if he makes a default in filing with the Registrar, within one week after such meeting, a return of the holding of the meeting and its date he shall be liable. **Fine not exceeding Rs. 50 every day on which the default continues.**

- 238 Any person upon any examination on oath authorised under this Act or in any affidavit, deposition, &c., intentionally giving false evidence shall be liable. **Imprisonment not exceeding 3 years and fine.**
- 243 Any person obtaining from the Court an order declaring the dissolution of a Company to be void under this section and failing to file with the Registrar a certified copy of the order within 21 days after the making of the order shall be liable. **Fine not exceeding Rs. 5 for every day during which the default continues.**
- 244 Where a Company is being wound up and the winding up is not concluded within one year after its commencement the Liquidator shall at stated intervals until the winding up is concluded file with the Registrar a statement in the prescribed form containing the prescribed particulars and on his making a default therein shall be liable. **Fine not exceeding Rs. 500 for each day during which the default continues.**
- 277 Every Company incorporated outside British India and having a place of business in British India shall, on failing to file with the Registrar in the province in which such place of business is situated, the forms and statements prescribed by this section be liable. **Fine not exceeding Rs. 500 or in case of a continuing offence Rs. 50 for every day during which the default continues.**

- 282 Whoever in any return, report, certificate, Balance Sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable. **Imprisonment of either description for a term which may extend to 3 years and also fine**
- 283 Any person or persons trading or carrying on business under any name or title of which " Limited " is the last word, such person or persons shall, unless duly incorporated with limited liability, be liable. **Fine not exceeding Rs. 1000 every day which that name or title has been used.**

CHAPTER V.

TABLE B.

(SECTIONS 249 AND 262.)

Table of Fees to be Paid to the Registrar.

I.—BY A COMPANY HAVING A SHARE CAPITAL.

Rs. a. p.

1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of ... 40 0 0
2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—

For every 10,000 shares of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees 20 0 0

For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees ... 5 0 0

Rs. a. p.

For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees	I 0 0
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3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :

Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

Rs. a. p

- | | | | | |
|----|--|---|---|---|
| 5. | For filing any document by this Act required or authorised to be filed, other than the Memorandum or the abstract required to be filed with the Registrar by a Receiver or the statement required to be filed with the Registrar by the Liquidator in a winding up ... | 5 | 0 | 0 |
| 6. | For making a record of any fact by this Act authorised or required to be recorded by the Registrar, a fee of | 5 | 0 | 0 |

II.—BY A COMPANY NOT HAVING A SHARE CAPITAL.

- | | | | | |
|----|---|-----|---|---|
| 1. | For registration of a company whose number of members, as stated in the Articles of Association, does not exceed 20 ... | 40 | 0 | 0 |
| 2. | For registration of a company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100 ... | 100 | 0 | 0 |
| 3. | For registration of a company whose number of members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above fee of | | | |

Rs. a. p.

Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.

4. For registration of a company in which the number of members is stated in the Articles of Association to be unlimited, a fee of ... 400 0
5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable if such increase had been stated in the Articles of Association at the time of registration : 5 0

Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company.

6. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

Rs. a. p.

- | | | |
|----|--|-----------|
| 7. | For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the Registrar by a Receiver or the statement required to be filed with the Registrar by the Liquidator in a winding up ... | 5 0 0 |
| 8. | For making a record of any fact by this Act authorised or required to be recorded by the Registrar, a fee of | 5 0 0 |

Form F.

Section 132.)

..... Limited.

19

s. a. p.	PROPERTY AND ASSETS.	Rs a. p.
	Fixed Capital Expenditure	
	(Distinguishing as far as possible between expenditure upon goodwill, land, buildings, leaseholds, railway sidings, plant, machinery, furniture, development of property, patents, trade-marks and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the total Depreciation written off under each head.)	
	Preliminary Expenses	
	Commission or Brokerage	
.....	(Commission or Brokerage paid for underwriting or placing shares or debentures until written off.	
...	Stores and spare Gear	
... ..	Loose Tools	
.....	Live Stock	
... .	Stock-in-Trade (Stating mode of valuation, e.g., cost or market value.)	
...	Bills of Exchange	
... ..	Book Debts	
positive ..	(Distinguishing in the case of a Bank between those considered good and in respect of which the Bank is fully secured and those considered good for which the Bank holds no security other than the debtor's personal security, and distin-	

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